

IN THE UNITED STATES DISTRICT COURTS  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
AND THE NORTHERN DISTRICT OF CALIFORNIA  
UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES  
PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, et al.,  
Plaintiffs,  
v.  
ARNOLD SCHWARZENEGGER,  
et al.,  
Defendants.

NO. CIV S-90-0520 LKK JFM P  
**THREE-JUDGE COURT**

MARCIANO PLATA, et al.,  
Plaintiffs,  
v.  
ARNOLD SCHWARZENEGGER,  
et al.,  
Defendants.

NO. C01-1351 TEH  
**THREE-JUDGE COURT**  
**ORDER**

This matter came on for hearing on March 12, 2008 on plaintiffs' motion to compel production of documents that have been withheld by defendants on various claims of privilege. Lori Rifkin, Esq. and Sara Norman, Esq. appeared as counsel for plaintiffs. Paul Mello, Esq., appeared as counsel for defendants.

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BACKGROUND<sup>1</sup>

The dispute at bar arises in connection with plaintiffs' first request for production of documents, served in these proceedings on September 5, 2007.<sup>2</sup> On October 25, 2007, defendants served responses to plaintiffs' first document production request. Therein, defendants interposed several general objections, and they asserted various privileges and interposed objections to each of the specific requests. See Defendants' Responses to Plaintiffs' First Set of Requests for Production of Documents, filed October 26, 2007.

In a stipulation filed November 2, 2007, the parties agreed to a schedule for rolling production of responsive, non-privileged documents as well as privilege logs. On December 6, 2007, this court heard oral argument on plaintiffs' motion to compel production of documents withheld pursuant to claims of privilege. At the conclusion of the hearing, the court issued an oral ruling granting plaintiffs' motion to compel. A written order followed on December 7, 2007. On the same day, defendants filed a motion for reconsideration or, in the alternative, for a stay of this court's order.

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<sup>1</sup> Additional background relevant to the instant dispute is set forth in this court's December 6, 2007 order and need not be repeated herein.

<sup>2</sup> That request contains thirty-eight separate requests for production of documents, including requests for documents related to: the implementation of Assembly Bill 900 (AB 900); any projected change in California's prison population; the California Department of Corrections and Rehabilitation's (CDCR) choice of prison sites for construction of additional prison beds, buildings to treat or house inmates, and reentry program facilities under various sections of AB 900, including site surveys and Environmental Impact Reports, communications from or to local community groups and/or government officials, timetables for the construction of such beds and progress in meeting the timetables; timetables for transfers of inmates out of state under AB 900; the CDCR's ability or inability to hire and/or retain medical and mental health staff, including analyses of the effect of AB 900 on medical and mental health staffing levels; studies or analyses of the effect of AB 900 on medical and mental health care at the prisons; any measures defendants have considered to reduce prison populations other than the measures in AB 900; contingency plans, other than population reducing measures, defendants have considered initiating when prisons reach their maximum capacity; defendants' determination of the maximum capacity of any prison or the entire prison system; timetables for obtaining funding to implement AB 900 and defendants' progress therewith; any consideration of placing limits on the prison population; any consideration of the effects of sentencing reform, a sentencing commission, and changes in parole policies on the prison population; specific matters referenced in the Declaration of Scott Kernan filed in opposition to plaintiffs' motion to convene a three judge panel; and changes or clarifications of parole discharge policies and parole revocation policies. See Ex. F to Declaration of Michael W. Bien in Support of Joint Statement Regarding Discovery Dispute, filed October 22, 2007.

1 By order filed December 11, 2007, the three-judge court stayed this court's order.  
2 Subsequently, by order filed December 17, 2007, the three-judge court granted defendants  
3 additional time to review and revised their privilege logs and the matter was referred back to  
4 the undersigned for further proceedings thereon. In accordance with that order, by order  
5 filed December 20, 2007, this court directed defendants to serve, inter alia, their revised  
6 privilege logs on or before January 28, 2008. That deadline was subsequently extended. See  
7 Order filed January 30, 2008. Defendants' final revised privilege logs were filed and served  
8 on February 22, 2008.

9 On February 25, 2008, the parties filed a Joint Statement Regarding Discovery  
10 Disputes setting forth disputes over defendants' assertions of deliberative process privilege,  
11 attorney-client privilege, and attorney work-product doctrine. By order filed February 27,  
12 2008, the parties were directed to meet and confer in person concerning all remaining  
13 disputes over all assertions of privilege in defendants' revised privilege logs with the  
14 exception of the deliberative process privilege and to file thereafter a list of all documents as  
15 to which disputes remain over claims of privilege other than the deliberative process  
16 privilege and, as appropriate, supplemental briefing relevant to any remaining disputes.

17 On March 7, 2008, the parties filed a joint list of disputed documents. In that joint  
18 statement, the parties represent that their disputes over claims of privilege other than the  
19 deliberative process privilege, the attorney-client privilege, and the attorney work product  
20 doctrine have been resolved. See Joint List of Disputed Documents, filed March 7, 2008, at  
21 5. The list of documents that remain in dispute following the parties' completion of the  
22 process required by the court's February 27, 2008 order is attached as Exhibit C to the  
23 Declaration of Sara Norman in Support of Joint List of Disputed Documents, filed March 7,  
24 2008. By this order, the court resolves disputes concerning claims of attorney-client  
25 privilege and attorney work product privilege.<sup>3</sup> Ruling on the parties' disputes concerning

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26 <sup>3</sup> As noted in footnote 1, supra, the complete list of documents in dispute is attached  
27 as Exhibit C to the Declaration of Sara Norman in Support of Joint List of Disputed  
28 Documents, filed March 7, 2008. A deliberative process privilege has also been asserted for  
many of those documents. Because resolution of the issues related to the deliberative process

defendants' claims of deliberative process privilege is deferred pending filing by the parties of a joint statement of all claims and defenses as required by this court's March 24, 2008 order, as said disputes are integrally related to the claims and defenses raised in this action.

#### ANALYSIS

##### I. General Principles

Rule 26(b)(1) of the Federal Rules of Civil Procedure provides that "[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. . . ." Fed. R. Civ. P. 26(b)(1). Defendants' claims of privilege in these proceedings are governed by principles of federal common law. See Fed. R. Evid. 501; see also Kerr v. United States District Court for the Northern District of California, 511 F.2d 192, 197 (9th Cir. 1975).

It is well-established that the federal "policy favoring open discovery requires that privileges must be 'strictly construed.'" Dowling v. American Hawaii Cruises, Inc., 971 F.2d 423, 425 (9<sup>th</sup> Cir. 1992) (quoting University of Pennsylvania v. EEOC, 493 U.S. 182, 189 (1990)). The United States Supreme Court has made it clear that an evidentiary privilege is not applied "unless it 'promotes sufficiently important interests to outweigh the need for probative evidence. . . .'" University of Pennsylvania, 493 U.S. at 198 (quoting Trammel v. United States, 445 U.S. 40, 51 (1980)). "Inasmuch as '[t]estimonial exclusionary rules and privileges contravene the fundamental principles that 'the public . . . has a right to every man's evidence,'" id. at 50 [internal citation omitted], any such privilege must 'be strictly construed.' 445 U.S. at 50." University of Pennsylvania, id.

Rule 26(a)(5)(A) of the Federal Rules of Civil Procedure provides:

When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner

privilege is deferred pending filing of a joint statement of claims and defenses, defendants will not be required to produce at time any document for which a claim of deliberative process privilege has been raised, even if the court has determined that a claim of attorney-client privilege and/or attorney work product privilege for the same document has not been sustained.

that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

Fed. R. Civ. P. 26(a)(5)(A).

The specific “nature” of the notice required by Rule 26(b)(5) “is explicitly left indeterminate.” Burlington Northern & Santa Fe Ry. Co. v. U.S. Dist. Court for Dist. of Mont., 408 F.3d 1142, 1147 (9th Cir. 2005). ““The rule does not attempt to define for each case what information must be provided when a party asserts a claim of privilege or work product protection.”” Id. at 1147-48 (quoting Rule 26(b)(5) advisory committee’s note (1993 Amendments). However, it is clear that “the ‘party must . . . provide sufficient information to enable other parties to evaluate the applicability of the claimed privilege or protection.’” Id. at 1148 (quoting Rule 26(b)(5) advisory committee note (1993 Amendments).

In Burlington Northern, the United States Court of Appeals for the Ninth Circuit set forth several factors that a court is to consider in determining whether a particular assertion of privilege satisfies the requirements of Rule 26(a)(5)(A):

the degree to which the objection or assertion of privilege enables the litigant seeking discovery and the court to evaluate whether each of the withheld documents is privileged (where providing particulars typically contained in a privilege log is presumptively sufficient and boilerplate objections are presumptively insufficient); the timeliness of the objection and accompanying information about the withheld documents (where service within 30 days, as a default guideline, is sufficient); the magnitude of the document production; and other particular circumstances of the litigation that make responding to discovery unusually easy (such as, here, the fact that many of the same documents were the subject of discovery in an earlier action) or unusually hard. These factors should be applied in the context of a holistic reasonableness analysis, intended to forestall needless waste of time and resources, as well as tactical manipulation of the rules and the discovery process. They should not be applied as a mechanistic determination of whether the information is provided in a particular format. Finally, the application of these factors shall be subject to any applicable local rules, agreements or stipulations among the litigants, and discovery or protective orders.

Id. at 1149.

Defendants have the burden of proving application of the asserted privileges. See In re Grand Jury Investigation, 974 F.2d 1068, 1071 (9th Cir. 1992) (attorney client privilege); Coastal States Gas Corp. v. Department of Energy, 617 F.2d 854, 866 (D.C.Cir. 1980) (attorney work product).<sup>4</sup>

## II. Attorney-Client Privilege

The attorney client privilege protects what a client tells a lawyer. The privilege encourages full disclosure between lawyer and client, so that the lawyer may give informed legal advice. Clarke v. American Commerce Nat. Bank, 974 F.2d 127, 129 (9th Cir. 1992). The privilege has eight essential elements: “(1) [w]here legal advice of any kind is sought (2) from a professional legal advisor in his [or her] capacity as such, (3) the communications relating to the purpose, (4) made in confidence (5) by the client, (6) are at his [or her] instance permanently protected, (7) from disclosure by him [or her] self or by the legal advisor, (8) unless the protection be waived.” Admiral Ins. v. U.S. Dist. Court for Dist. of Ariz., 881 F.2d 1486, 1492 (9th Cir. 1989) (citing In re Fischel, 557 F.2d 209, 211 (9<sup>th</sup> Cir. 1977).

Several options for establishing the existence of the attorney-client privilege are available. See Dole v. Milonas, 889 F.2d 885, 890 (9<sup>th</sup> Cir. 1989). In the instant case,

<sup>4</sup> Rule 26(b)(5)(B) makes provision for return of material produced in discovery that is subject to a colorable claim of privilege:

**(B) Information Produced.** If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

Fed. R. Civ. P. 26(b)(5)(B). In addition, the parties have entered into a “clawback” agreement that provides for the return of privileged material produced during discovery. See Ex. O to Declaration of Lori Rifkin in Support of Plaintiff’s Motion to Compel Production of Documents, filed November 30, 2007.

defendants rely in the first instance on the February 22, 2008 privilege logs. To make an adequate showing of attorney-client privilege, a privilege log “should identify: (a) the attorney and client involved; (b) the nature of the document (i.e., letter, memorandum); (c) all persons or entities shown on the document to have received or sent the document; (d) all persons or entities known . . . to have been furnished the document or informed of its substance; and (e) the date the document was generated, prepared or dated.” Dole, at 888 n.3, 890.

Plaintiffs raise three separate challenges to claims of privilege for specific documents identified in the privilege logs. For the first group of documents, plaintiffs contend that the privilege logs do not identify any attorney as either an author or a recipient of the specified documents. For the second group of documents, plaintiffs contend that the privilege log shows that an outsider to the attorney-client relationship was a recipient of the documents at issue. Finally, for the majority of documents at issue plaintiffs contend that it appears that an attorney was copied on a document that is not privileged.

The court has conducted an in camera review of all of the documents in dispute. See, e.g., U.S. v. Zolin, 842 F.2d 1135, 1138-39 (9<sup>th</sup> Cir. 1988) (“In the Ninth Circuit the rules of evidence with respect to privileges do allow for in camera review: a court undertakes in camera review of documents to decide whether the attorney-client privilege even exists with respect to those documents.”)

Fourteen documents are challenged by plaintiffs on the ground that the privilege logs do not identify an attorney as either an author or a recipient of said documents, as follows: E00000613; E00001100; E00003041; E00003179; E00007081; E00014065; E00022699; E00028654; E00044198; E00045366; E00046768; E00084734; E00095838; and E00099404.<sup>5</sup> In camera review of the fourteen documents reveals the following.

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<sup>5</sup> Four of the documents have a claim of deliberative process privilege raised in addition to the claim of attorney work product doctrine: E00001100 (attorney-client and attorney work product); E00003041 (attorney-client and attorney work product); E00007081 (attorney-client); and E00084734 (attorney-client).



For five documents in this category, E00001100, E00007081, E00014065, E00022699, and E00084734, in camera review does not show that an attorney was either an author or a recipient of the document.<sup>6</sup> For that reason, defendants have not met their burden of establishing that these documents are protected by the attorney-client privilege. Defendants will be required to produce at this time documents E00014065 and E00022699, as no claim of deliberative process privilege has been raised for either of those documents. Defendants will not be required to produce documents E00001100, E00007081 or E00084734 at this time due to pending claims of deliberative process privilege.

For the remaining nine documents, in camera review does show that an attorney was either an author or a recipient of the document at issue. However, after in camera review of each of the documents the court finds that none of them constitute communications of the type protected by the attorney-client privilege. Defendants will be required to produce eight of these documents at this time. See Attachment A to this Order. The ninth, E00003041, is also subject to a claim of deliberative process privilege. For that reason, defendants will not be required to produce that document at this time.

Ten documents are challenged by plaintiffs on the ground that the privilege log shows an outsider to the attorney-client relationship included as either an author or a recipient of the document, as follows: E00020277; E00020512; E00045948; E00046983; E00046988; E00046989; E00082860; E00083812; E00099569; and E00099573.

For documents E00020277, E00099569 and E00099573, defendants have raised a claim of deliberative process privilege raised in addition to the claim of attorney-client privilege. After in camera review, the court finds that all of these documents have outsiders

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<sup>6</sup> In an e:mail from Samantha Tama to Lori Rifkin and Sara Norman, defendants assert that document E00014065 is a communication between Lisa Tillman, an attorney, and Doug McKeever, Michael Barks, and Robin Dezember, all non-attorneys. See Ex. A to Declaration of Samantha Tama in Support of Defendants' Position Regarding Discovery Dispute, filed March 7, 2008. Defendants further assert that document E00022699 is a communication between Molly Arnold, an attorney, and Vince Brown and Jaci-Marie Thompson, both non-attorneys. Id. Those assertions are not confirmed by review of the document, nor is there any evidence in the record to support the assertions. Ms. Tama's e:mail is not verified, and her declaration verifies only that the e:mail was sent, not the truth of the matters contained therein.



1 to the attorney-client privilege identified as authors or recipients and, therefore that the claim  
2 of attorney-client privilege is not sustained. However, the documents will not be produced at  
3 this time pending resolution of the claims of deliberative process privilege.

4 The privilege log identifies a California state senator and a California assemblyman as  
5 the author of document E00020512<sup>7</sup>; and a woman named Susan Turner of an organization  
6 called the Center of Evidence-Based Corrections as the recipient of documents E00045948  
7 and E00046989 and the author of documents E00046983 and E00046988. Each of these  
8 individuals are outsiders to any attorney-client relationship between defendants and their  
9 attorneys. For that reason, defendants' claim of privilege for these documents cannot be  
10 sustained. Defendants will be required to produce these documents.

11 The last two documents are e:mail exchanges between Joan Petersilia, Ph.D. and  
12 Benjamin Rice. Plaintiffs contend that Dr. Petersilia is a professor at University of  
13 California Irvine who works as an independent contractor for defendants. Defendants  
14 identify Dr. Petersilia as part of the Governor's Office as the current chair of the  
15 Rehabilitation Strike Team. (Preliminary Names List, filed April 14, 2008, at 25.) The  
16 document does not contain any communication protected by the attorney-client privilege.  
17 Defendants will be required to produce these documents.

18 The final, and largest, group of documents are those which plaintiffs contend an  
19 attorney was copied on a non-privileged document. The court's findings after in camera  
20 review with respect to the applicability of the attorney-client privilege for each of these  
21 documents are set forth on the list attached to this order. Defendants will be required to  
22 produce at this time all documents for which a claim of attorney client privilege is not  
23 sustained and for which no claim of deliberative process privilege has been made.

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24 <sup>7</sup> In the e:mail from Samantha Tama described in footnote 5, supra, defendants  
25 contend that document E00020512 is a privileged communication between Deborah Cregger,  
26 staff counsel with the California Department of Finance (DOF), and Stephen Benson and Jim  
27 Martone, budget analysts with DOF. Defendants do not explain the discrepancy between this  
28 contention and the privilege log entry for this document. In addition, in the same e:mail  
defendants for the first time assert a deliberative process privilege for document E00020512.  
The assertion of the deliberative process privilege for this document is untimely and will not  
be considered by this court.

1 III. Attorney Work Product Doctrine

2 “The work product doctrine was first articulated by the Supreme Court in Hackman v.  
3 Taylor, 329 U.S. 495, 67 S.Ct. 385, 91 L.Ed. 451 (1947). Fed.R.Civ.P.Rule 26(b)(3), which  
4 substantially codifies the Hickman decision, provides in relevant part:

5 [A] party may obtain discovery of documents and tangible things  
6 otherwise discoverable under subdivision (b)(1) of this rule and  
7 prepared in anticipation of litigation or for trial by or for another  
8 party or by or for that other party’s representative (including the  
9 other party’s attorney, consultant, surety, indemnitor, insurer, or  
10 agent) only upon a showing that the party seeking discovery has  
11 substantial need of the materials in the preparation of the party’s  
12 case and that the party is unable without undue hardship to obtain  
the substantial equivalent of the materials by other means. In  
ordering discovery of such materials when the required showing  
has been made, the court shall protect against disclosure of the  
mental impressions, conclusions, opinions, or legal theories of an  
attorney or other representative of a party concerning the  
litigation.

13 The primary purpose of the work product rule is to ‘prevent exploitation of a party’s efforts  
14 in preparing for litigation.’ Admiral Ins. Co. v. United States District Court, 881 F.2d 1486,  
15 1494 (9th Cir.1989). Like the discovery process that it limits, the work product doctrine  
16 encourages efficient development of facts and issues.” Holmgren v. State Farm Mutual Auto  
17 Insurance Co., 976 F.2d 573, 576 (9th Cir. 1992) (quoting Fed. R. Civ. P. 26(b)(1)).

18 Defendants have claimed attorney work product protection for twenty-five of the  
19 documents for which claims of attorney-client privilege and/or attorney work product  
20 protection are resolved by this order. After in camera review, this court finds that one or  
21 both claims of privilege are valid for six of those documents: E00009615; E00021166;  
22 E00028419; E00028420; E00096636; and E00096637. For the remaining nineteen  
23 documents, the court finds that defendants have not met their burden of demonstrating that  
24 the documents are entitled to protection as attorney work product. Defendants will be  
25 ordered to produce those documents.

26 In accordance with the above, IT IS HEREBY ORDERED that within five business  
27 days from the date of this order, defendants shall produce to counsel for plaintiffs for  
28 inspection and copying all documents listed in Attachment A to this order, which are all

1 documents for which neither a claim of attorney-client privilege nor a claim of attorney-work  
2 product doctrine has been established and for which no claim of deliberative process  
3 privilege has been made.

4 Dated: April 14, 2008.

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7 UNITED STATES MAGISTRATE JUDGE

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9 discovery19.o

ATTACHMENT A

DOCUMENTS TO BE PRODUCED PURSUANT TO THIS ORDER-- CLAIM OF  
ATTORNEY CLIENT PRIVILEGE AND/OR ATTORNEY WORK PRODUCT  
PROTECTION NOT SUSTAINED

A) No attorney listed as author or recipient in privilege logs

E00000613  
E00003179  
E00014065  
E00022699  
E00028654  
E00044198  
E00045366  
E00046768  
E00099404

B) Outsider to the attorney-client relationship included as author or recipient in privilege logs

E00020512  
E00045948  
E00046983  
E00046988  
E00046989  
E00082860  
E00083812

C) Attorney(s) copied on apparently non-privileged communication

E00000270  
E00000271  
E00000374  
E00001408  
E00001409  
E00001575  
E00003172  
E00003174  
E00003177  
E00003178  
E00004350  
E00004351  
E00005322  
E00006393  
E00006394  
E00009517  
E00009518  
E00009599  
E00011245  
E00012401  
E00012402  
E00012403

1	E00012405
	E00012406
2	E00014163
	E00016330
3	E00017356
	E00017357
4	E00017358
	E00017359
5	E00017360
	E00017361
6	E00017362
	E00017388
7	E00017389
	E00017390
8	E00017391
	E00018099
9	E00018113
	E00018116
10	E00018117
	E00018118
11	E00018119
	E00018120
12	E00018121
	E00018122
13	E00018123
	E00018140
14	E00018141
	E00018142
15	E00018143
	E00018144
16	E00018244
	E00018506
17	E00019023
	E00019024
18	E00019025
	E00019066
19	E00019084
	E00019498
20	E00019559
	E00019560
21	E00019809
	E00020511
22	E00020819
	E00022591
23	E00022592
	E00022593
24	E00022594
	E00022595
25	E00022596
	E00022597
26	E00027889
	E00028440
27	E00028650
	E00028651
28	E00028797

1	E00028798
	E00028948
2	E00028979
	E00029552
3	E00029553
	E00029624
4	E00029625
	E00029626
5	E00029627
	E00029628
6	E00030167
	E00030168
7	E00030169
	E00030171
8	E00030571
	E00030572
9	E00030573
	E00030574
10	E00030575
	E00030576
11	E00030577
	E00030578
12	E00030579
	E00031150
13	E00031163
	E00031493
14	E00031495
	E00031557
15	E00037576
	E00038348
16	E00038456
	E00038460
17	E00038514
	E00043945
18	E00044197
	E00044272
19	E00044398
	E00044618
20	E00044619
	E00044620
21	E00044626
	E00044666
22	E00044710
	E00044737
23	E00044749
	E00044875
24	E00044886
	E00045424
25	E00045431
	E00045436
26	E00045537
	E00045608
27	E00045808
	E00045983
28	E00046148

1	E00046160
	E00046161
2	E00046166
	E00046168
3	E00046382
	E00046460
4	E00046461
	E00046462
5	E00046463
	E00046464
6	E00046768
	E00047050
7	E00047071
	E00047253
8	E00047256
	E00047271
9	E00047414
	E00047453
10	E00047456
	E00047489
11	E00047512
	E00047820
12	E00048004
	E00048065
13	E00048389
	E00048391
14	E00048434
	E00048482
15	E00048490
	E00048505
16	E00048579
	E00048639
17	E00048791
	E00048823
18	E00049365
	E00050188
19	E00082874
	E00083483
20	E00084265
	E00084266
21	E00084267
	E00084268
22	E00084293
	E00084308
23	E00084449
	E00084450
24	E00084453
	E00084455
25	E00084456
	E00084574
26	E00084575
	E00084576
27	E00084577
	E00085017
28	E00085393



1	E00085765
	E00085795
2	E00085825
	E00085920
3	E00085921
	E00085956
4	E00085983
	E00095838
5	E00096367
	E00096452
6	E00096622
	E00097040
7	E00097579
	E00097584
8	E00099273
	E00099500
9	E00099501
	E00099502
10	E00099503
	E00099504
11	E00099505
	E00099506
12	E00099507

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ATTACHMENT B

DOCUMENTS FOR WHICH CLAIM OF ATTORNEY CLIENT PRIVILEGE AND/OR  
ATTORNEY WORK PRODUCT PROTECTION IS SUSTAINED

A) No attorney listed as author or recipient in privilege logs

B) Outsider to the attorney-client relationship included as author or recipient in privilege logs

C) Attorney(s) copied on apparently non-privileged communication

E00002038  
E00003064  
E00004631  
E00004924  
E00004925  
E00006313  
E00006586  
E00006635  
E00006636  
E00006744  
E00007081  
E00007093  
E00009614  
E00009615  
E00017097  
E00018126  
E00018527  
E00018528  
E00018529  
E00018543  
E00018544  
E00018545  
E00018916  
E00019562  
E00019731  
E00019861  
E00019942  
E00020198  
E00020358  
E00020588  
E00020592  
E00020601  
E00020617  
E00020632  
E00020633  
E00020713  
E00020760  
E00021166  
E00021344

1	E00022235
	E00022236
2	E00022237
	E00022238
3	E00022239
	E00022240
4	E00022241
	E00022242
5	E00022243
	E00022252
6	E00022253
	E00022254
7	E00022255
	E00022256
8	E00022257
	E00028159
9	E00028419
	E00028420
10	E00028434
	E00028438
11	E00028439
	E00028537
12	E00028551
	E00028552
13	E00028553
	E00028649
14	E00028945
	E00028947
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ATTACHMENT C

DOCUMENTS FOR WHICH CLAIM OF ATTORNEY CLIENT PRIVILEGE AND/OR  
ATTORNEY WORK PRODUCT PROTECTION NOT SUSTAINED -- NOT TO BE  
PRODUCED AT THIS TIME DUE TO PENDING CLAIM OF DELIBERATIVE  
PROCESS PRIVILEGE

A) No attorney listed as author or recipient in privilege logs

E00001100  
E00003041  
E00007081

B) Outsider to the attorney-client relationship included as author or recipient in privilege logs

E00020277  
E00099569  
E00099573

C) Attorney(s) copied on apparently non-privileged communication

E00000375  
E00000376  
E00000377  
E00000847  
E00000848  
E00001099  
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E00001111  
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